

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA; STATE  
OF NEW YORK; AND BASIL SEGGOS, AS  
COMMISSIONER OF THE NEW YORK  
STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION,

Plaintiffs,

v.

CITY OF MOUNT VERNON,

Defendant.

No. 18 Civ. 5845 (CS)

**~~PROPOSED~~ ORDER  
REGARDING REMEDIAL FINES  
FOR MISSED DEADLINES IN  
CONNECTION WITH THE AUGUST  
2, 2021 NOTIFICATION OF  
VIOLATION**

CATHY SEIBEL, United States District Judge:

WHEREAS, this Court previously entered a Third Remedial Order, ECF No. 97, providing for remedial fines for future violations of Court-ordered deadlines contained in the Court’s September 21, 2020 Order, ECF No. 74, the Court’s March 10, 2021 Order, ECF No. 90, and the Third Remedial Order, by defendant the City of Mount Vernon (“Defendant” or the “City”);

WHEREAS, the Third Remedial Order included a cure period, during which the City could remedy violations identified by plaintiffs United States of America, State of New York, and Basil Seggos, as Commissioner of the New York State Department of Environmental Conservation (together, “Plaintiffs”), and thereby avoid liability for such remedial fines, *see* ECF No. 97 ¶ 31;

WHEREAS, pursuant to the Third Remedial Order, Plaintiffs filed a Notification of Violation on August 2, 2021, pursuant to paragraph 29 of the Third Remedial Order, identifying five separate violations and stating the amount of fines owed, *see* ECF No. 98;

WHEREAS, on August 10, 2021, the City filed a Response to Notification of Violation, *see* ECF No. 99, objecting to the imposition of remedial fines;

WHEREAS, on August 16, 2021, Plaintiffs responded to the City's August 10, 2021 Response, *see* ECF No. 100;

WHEREAS, the City contends, and Plaintiffs agree, that the City has cured one of the violations identified in the Notification of Violation, designated as No. 5 in that Notification;

WHEREAS, the City does not dispute the existence of the remaining violations identified in the Notification of Violation, designated as Nos. 1-4 in that Notification; and

It is hereby ordered as follows:

1. The City's August 5, 2021 private connection inspection cures violation No. 5 in the August 2, 2021 Notification of Violation, and no fines are due for that violation, pursuant to paragraph 31 of the Third Remedial Order;

2. The City has failed to (a) submit an Illicit Discharge Action Plan; (b) purchase clamshell equipment; (c) conduct dry weather outfall inspections; and (d) complete visual inspections to investigate sources of illicit discharge for non-televised storm sewer segments, in violation of paragraphs 1, 2, 12, and 20 in the Third Remedial Order and as described in the Notification. *See* ECF No. 97; *see also* ECF Nos. 98, 98-1 (Declaration of Kimberly McEathron)

¶¶ 8.a, 8.b, 8.c, 9.a.

3. These violations have not been cured and are ongoing.

4. Pursuant to paragraph 27 of the Third Remedial Order, the City is liable for remedial fines, to be paid to an escrow account as described in the Third Remedial Order. *See* ECF No. 98 (violation numbers 1, 2, 3, 4).

5. As of August 16, 2021, and pursuant to paragraph 27 of the Third Remedial Order, the City owes \$222,000 for the period of July 1, 2021 through August 16, 2021, as follows:

<b>No.</b>	<b>Compliance Requirement Violation</b>	<b>Fine per violation per day beginning 7/1/2021<sup>1</sup></b>	<b>Deadline</b>	<b>Days (beginning 7/1/2021) through August 16, 2021</b>	<b>Fines owed as of August 16, 2021</b>
1	Failure to submit an Illicit Discharge Action Plan. ECF No. 97 ¶ 1; <i>see also</i> McEathron Decl. ¶ 8.a.	\$1,000.00 for days 1-30; \$1,500.00 for days 31-47	June 30, 2021	47	\$55,500
2	Failure to purchase clamshell equipment. ECF No. 97 ¶ 12; <i>see also</i> McEathron Decl. ¶ 8.b.	\$1,000.00 for days 1-30; \$1,500.00 for days 31-47	June 30, 2021	47	\$55,500
3	Failure to conduct dry weather outfall inspections. ECF No. 97 ¶ 2; <i>see also</i> McEathron Decl. ¶ 8.c.	\$1,000.00 for days 1-30; \$1,500.00 for days 31-47	June 30, 2021	47	\$55,500
4	Failure to complete visual inspections to investigate sources of illicit discharge for all storm sewer segments that were not televised, including by submitting the necessary documentation. ECF No. 97 ¶ 20; <i>see also</i> McEathron Decl. ¶ 9.a.	\$1,000.00 for days 1-30; \$1,500.00 for days 31-47	June 29, 2021	47	\$55,500

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<sup>1</sup> Paragraph 28 of the Third Remedial Order limits remedial fines to days of violation beginning July 1, 2021.

The City shall pay \$222,000 into the escrow account established pursuant to paragraph 32 of the Third Remedial Order, by September 1, 2021, *i.e.*, within 30 days of the August 2, 2021 Notification of Violation, as provided in the Third Remedial Order, *see* ECF No. 97 ¶ 29.

6. Pursuant to paragraph 28 of the Third Remedial Order, additional fines shall continue to accrue until performance is satisfactorily completed.

7. Pursuant to paragraph 30 of the Third Remedial Order, by August 31, 2021, the City shall file on the docket a Monthly Violation Report, signed by a senior City Official under penalty of perjury describing the status of each violation, any fine amounts paid as of that date, and any additional fine amounts due by not yet paid. The City shall continue to file such Monthly Violation Reports for each violation until that violation is corrected.

8. Pursuant to paragraph 33 of the Third Remedial Order, the City shall provide the EPA and DEC with proof of payments made to the escrow agent, attached to a transmittal letter referencing the name and court docket number of this case and USAO File No. 2016V02002.

9. As provided in paragraph 33 of the Third Remedial Order, the City may in the future request Plaintiffs' written consent to or an Order of this Court permitting disbursement of escrowed funds solely for the purpose of funding work reasonably designed to achieve and maintain compliance with Orders of this Court, as provided by the Third Remedial Order.

Dated and entered this 16<sup>th</sup> day of August, 2021



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CATHY SEIBEL  
UNITED STATES DISTRICT JUDGE

To be clear, "insufficient financial resources" or "the City budget situation" do not excuse violation of Court orders or federal law. It is the responsibility of the leaders and officials of the City of Mount Vernon to arrange its financial affairs so that it can meet its obligations.